

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS**

JOHN KNIGHT, DONNA RUSSELL  
KNIGHT, CHARLES COLE, VIIU  
NIILER, COUNTRY GLASS SHOP,  
AUNT SADIE'S, INC., AND  
SUSAN BOERMAN,

Plaintiffs,

V.

CHRISTMAS TREE SHOPS, INC.

Defendant.

**Case No. 04 12698 JLT**

**AFFIDAVIT OF CARRIE KEI HEIM**

I, Carrie Kei Heim, do hereby depose and say under oath as follows:

1. I am an attorney with the firm of Mintz Levin Cohn Ferris Glovsky & Popeo, PC, counsel for the defendant, Christmas Tree Shops, Inc. (“CTS”). I am familiar with the facts in, and procedural history of, the above-captioned action and am submitting this Affidavit and the exhibits attached hereto in support of Christmas Tree Shops, Inc.’s Opposition to Plaintiff’s Motion to Reconsider.

2. Attached to this Affidavit at Exhibit A are true and accurate copies of excerpts from the certified transcript of the November 8, 2005 Deposition of Deborah Watts.

3. Attached to this Affidavit at Exhibit B are true and accurate copies of sales records kept by CTS in the usual course of its business and produced by CTS in response to Plaintiffs' Requests for Production of Documents.

4. Attached to this Affidavit at Exhibit C are true and accurate copies of the front cover and title page of the book, "It's Great to Create" by Susan R. Boerman, purchased on eBay by counsel for CTS.

Signed, under the pains and penalties of perjury, this 6th day of December, 2005.

/s/ Carrie Kei Heim  
Carrie Kei Heim

**COPY**

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

JOHN KNIGHT, et al.,  
Plaintiffs,

vs.

04-12698-JLT

CHRISTMAS TREE SHOPS, INC.,  
Defendant.

TESTIMONY OF DEBORAH WATTS, called as a witness  
by and on behalf of the Plaintiffs, taken pursuant to  
the Federal Rules of Civil Procedure, before Paula E.  
Hogan, CSR, RPR, Notary Public in and for the  
Commonwealth of Massachusetts, taken at Ramada Regency  
Hotel, 1127 Route 132, Hyannis, MA, on Tuesday,  
November 8, 2005, commencing at 1:03 p.m.

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APPEARANCES:

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FOR THE DEFENDANT

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Litigation Counsel  
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FOR BED BATH & BEYOND

ALSO PRESENT:

JOHN FRANCIS KNIGHT  
DONNA RUSSELL KNIGHT

1 Q. Okay. I'm going to show you exhibit  
2 number 2. Have you ever seen that before?

3 A. No.

4 Q. I show you a document marked Plaintiffs'  
5 Exhibit 3. Do you recognize that?

6 A. Yes. This is one of the designs of the  
7 assortment.

8 Q. And that's referenced on CTS0305?

9 A. Actually no, it's not. Because this one  
10 says fall, so that would be referring to a fall  
11 design. This would be a Christmas design.

12 Q. Did you purchase the product that's in  
13 your hands right now, exhibit 2?

14 A. Yes, I did.

15 Q. And who did you order it from?

16 A. From a factory in China.

17 Q. And what's the name of it?

18 A. Do you want the trader name?

19 Q. The actual name of the company and any  
20 other name that it goes by.

21 A. Okay. The trading agent's name is Jack-  
22 Tom Industrial.

23 Q. And how did you order this particular  
24 item?

1           A.       We were in the factory and we were walking  
2 around. And I picked the fall design and Christmas  
3 design off the shelf. I picked this item off the  
4 shelf.

5           Q.       So, Jack-Tom was already making this  
6 product for someone else?

7           A.       The factory, Fanrong 2 is the factory  
8 name. And it was in their showroom.

9           Q.       Could you spell that for me?

10          A.       Okay. F-a-n-r-o-n-g.

11          Q.       Fanrong?

12          A.       Fanrong number 2.

13          Q.       Do you know what that name means?

14          A.       I don't, I'm sorry.

15          Q.       Okay. Did you visit the factory?

16          A.       Uh-huh.

17          Q.       And where is the factory?

18          A.       It's in a place called Huang Yan.

19          Q.       Could you spell that?

20          A.       Yes. H-u-a-n-g Y-a-n.

21          Q.       And what province is that in, do you know?

22          A.       I don't know. I'm sorry.

23          Q.       How did you fly there?

24          A.       I don't know where I flew from. But we

1 Q. Okay.

2 MR. BIAGETTI: So, just for my  
3 clarification, 3600 pieces means 1200 sets of three?

4 THE WITNESS: 1200 pieces of each  
5 design. So, there's three designs, 1200, 1200, 1200  
6 for 36.

7 MR. JOSEPH: Got it. Thank you.

8 Q. I show you a document that's marked  
9 Plaintiffs' Exhibit 41.

10 (Whereupon, the document referred to  
11 by counsel was duly marked for  
12 identification as Exhibit #41.)

13 BY MR. JOSEPH:

14 Q. Could you tell me if you've ever seen that  
15 document before?

16 A. Yes, I've seen this before.

17 Q. And when did you see it?

18 A. I don't remember.

19 Q. What is that document used for?

20 A. This is -- we use this with our vendors so  
21 that we do not -- we don't want to infringe on  
22 anybody's patents, copyrights, et cetera.

23 Q. Would you use that for every order that  
24 you purchase?

1 A. Would I use this on every order that I  
2 purchase?

3 MR. BIAGETTI: You.

4 Q. Yes.

5 MR. BIAGETTI: From now into the  
6 future?

7 Q. No, have you used it for every order that  
8 you purchased?

9 A. This?

10 Q. That document, yes.

11 MR. BIAGETTI: In her entire career at  
12 Christmas Tree Shops?

13 MR. JOSEPH: Yes.

14 A. No.

15 Q. For what period of time have you used it?

16 A. I can't tell you. I don't remember.

17 Q. Did you use that document when you ordered  
18 the winter sign, the Frosty Snow Cone?

19 A. No. I did not.

20 Q. How do you know that?

21 A. Because when I went into the factory, I  
22 picked this off the shelf. It was a ready made  
23 product.

24 Q. But wouldn't Christmas Tree Shops want a



C E R T I F I C A T E

COMMONWEALTH OF MASSACHUSETTS

Barnstable, ss

Re: KNIGHT, et al. V. Christmas Tree Shops

I, PAULA E. HOGAN, CSR, RPR, Notary Public in and for the Commonwealth of Massachusetts, do hereby certify as follows:

1. That DEBORAH J. WATTS, the witness whose testimony is herein before set forth was duly recorded and transcribed by me;

2. That such deposition is a true record of the testimony given by said witness to the best of my knowledge, skill and ability.

3. I further certify that I am neither attorney or counsel for, nor related to or employed by, any of the parties, and further that I am not a relative or employee of any attorney or counsel employed by the parties hereto or financially interested in this matter;

IN WITNESS WHEREOF, I hereunto set my hand and notarial seal this 15th day of November, 2005.

ORIGINAL SIGNED BY  
PAULA E HOGAN

PAULA E. HOGAN, CSR, RPR  
Notary Public  
My Commission Expires:  
October 4, 2007

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# CTS Access - BY178 Report

Sub Vendor	UPC	SKU	Description	Cost	Retail	Mark Up %	Case	Ad	On Ord	On Ord	Reserv	Whse	Stores	Last 7	Store	Total	Sales	Last 7	Sls YTD	Total OH	Last Rcvd
							Pack		Qty	Qty	Qty	OH	OH	Dy Sls	Wk Sp	Wk Sp	YTD	Day \$\$\$	\$\$\$	\$\$\$	Dt
751 96000 Jack	13917678	32F25356 %	Painted Christmas Hanger	\$1.366	\$1.99	31.4	36		0	0	0	1332	134	10	13	146	14	19	27	2917	11/9/04

Averages and Totals (in thousands):

CTS0290

## CTS Access - BY178 Report

**Buyer:** 20 (Deborah Watts)  
**Category:** 75 (Xmas Home Decor)  
**Sub-Category:** 751 (Wood Gift)  
**Vendor:** 96000 (Jack Tom Ltd)

**UPC:** 13917678

**SKU:** 32F25356 %

**Description:** Painted Christmas Hanger

**Case Pack:** 36  
**Cost:** \$1.366

**Retail Price:** \$1.99  
**Markup:** 31.4 %

<b>On Order Qty:</b> 0 (\$0)	<b>Store Wks Supply:</b> 13
<b>Whse OH:</b> 1332	<b>Total Wks Supply:</b> 146
<b>Store OH:</b> 134 (\$267)	<b>Sales YTD:</b> 14
<b>Total OH:</b> 1466 (\$2917)	<b>Last Rcvd Date:</b> 11/9/04
<b>Avg Wk Sales:</b> 8 (\$15)	<b>Last Rcvd Qty:</b> 756
<b>Last 7 Days Sales:</b> 10	<b>Rcvd YTD Qty:</b> 0

### Cost Details

<b>First Cost</b>	<b>Misc Cost</b>	<b>Duty Cost</b>	<b>Total</b>
\$1.000	\$0.363	\$0.00 (0.00%)	\$1.366

### Sales By Quarter

	Quarter 1	Quarter 2	Quarter 3	Quarter 4	Total
This Year:	0	4	10		14
Last Year:	0	0	1010	2049	3059

### Last 7 Days Sales

Sun	Sat	Fri	Thu	Wed	Tue	Mon	Total
2	1	0	1	6	0	0	10

# CTS Access - BY178 Report

Sub	Vendor	UPC	SKU	Description	Cost	Retail	Mark Up %	Case	Ad	On Ord	On Ord	Reserv	Whse	Stores	Last 7	Store	Total	Sales	Last 7	Sis YTD	Total OH	Last Rcvd
										Qty	\$\$\$	Qty	OH	OH	Dy	Wk	Wk Sp	YTD	Day	\$\$\$	\$\$\$	Dt
809	96000	Jack	13915988	32F25287	Fall Painted Plaque	\$1.225	\$3.99	69.3	36	0	0	0	0	1	0	0	0	0	0	0	4	8/18/04

Averages and Totals (in thousands):

CTS0292

## CTS Access - BY178 Report

**Buyer:** 37 (Sheryl Nason)  
**Category:** 80 (Special Holidays)  
**Sub-Category:** 809 (Fall)  
**Vendor:** 96000 (Jack Tom Ltd)

**UPC:** 13915988

**SKU:** 32F25287

**Description:** Fall Painted Plaque

**Case Pack:** 36

**Retail Price:** \$3.99

**Cost:** \$1.225

**Markup:** 69.3 %

**On Order Qty:** 0 (\$0)

**Store Wks Supply:** 0

**Whse OH:** 0

**Total Wks Supply:** 0

**Store OH:** 1 (\$4)

**Sales YTD:** 0

**Total OH:** 1 (\$4)

**Last Rcvd Date:** 8/18/04

**Avg Wk Sales:** 0 (\$0)

**Last Rcvd Qty:** 36

**Last 7 Days Sales:** 0

**Rcvd YTD Qty:** 0

### Cost Details

First Cost	Misc Cost	Duty Cost	Total
\$1.000	\$0.190	\$0.03	\$1.225

### Sales By Quarter

	Quarter 1	Quarter 2	Quarter 3	Quarter 4	Total
This Year:	0	0	0		0
Last Year:	0	67	3467	-3	3531

### Last 7 Days Sales

Wed	Tue	Mon	Sun	Sat	Fri	Thu	Total
0	0	0	0	0	0	0	0

# It's Great to Create



Susan R. Boerman

Acrylic Gouache  
or Acrylic

# It's Great to Create



SUSAN R. BOERMAN © 2001

*I'd like to thank my parents,  
friends & especially my husband,*

**Susan R. Boerman**

*Mark, for all your  
love & support.*

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